

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JOHN McKUNE,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of  
the Eastern District of Washington,  
Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Attorneys of Record.**

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Attorneys for Defendant and Plaintiff in  
Error.

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### **UNITED STATES OF AMERICA.**

Eastern District of Washington, Southern Division,  
United States District Court.

May Term, 1922.

### **Indictment.**

The Grand Jurors of the United States, chosen,  
selected and sworn in and for the Southern Division  
of the Eastern District of Washington, upon their  
oaths present:

### **FIRST COUNT.**

That JOHN McKUNE, whose other or true name  
is to the Grand Jurors unknown, late of the County  
of Yakima, State of Washington, heretofore, to wit:

on or about the tenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away, opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 25, 1919, in that he did then and there knowingly, wilfully, unlawfully and feloniously purchase from a person whose name is to the Grand Jurors unknown, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, which cocaine was not then and there in the original stamped package, nor from the original stamped package, as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. [1\*]

## SECOND COUNT.

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: On or about the tenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction

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\*Page-number appearing at foot of page of original certified Transcript of Record.



of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that being a person required to register under the provisions of said act, he did then and there unlawfully, wilfully and knowingly have in his possession, with intent to sell, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

### THIRD COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the tenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this court, did then and there violate the Act of December [2] 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon

all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away, opium or coca leaves their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter, exchange, and dispense to one Jack T. Robertson, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, and the said John McKune did then and there sell, barter, exchange, and dispense the aforesaid drugs without and not in pursuance of a written order of the person to whom such article was sold, bartered, exchanged or dispensed on a form issued in blank for that purpose by the Commissioner of Internal Revenue, nor upon receipt of a written prescription, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### FOURTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the eleventh day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court did then and there violate the Act of

December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, [3] compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully, unlawfully and feloniously purchase from a person whose name is to the Grand Jurors unknown, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, which cocaine was not then and there in the original stamped package, nor from the original stamped package, as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### FIFTH COUNT.

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: On or about the eleventh day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or

coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that being a person required to register under the provisions of said Act, he did then and there unlawfully, wilfully and knowingly have in his possession, with intent to sell, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, without having registered with the Collector of Internal Revenue and without having paid the special [4] tax as required by said act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### SIXTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the eleventh day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter, exchange and

dispense to one Marjorie Robertson a certain derivative of coca leaves, to wit: approximately two grains of cocaine, and the said John McKune did then and there sell, barter, exchange, and dispense the aforesaid drugs without and not in pursuance of a written order of the person to whom such article was sold, bartered, exchanged or dispensed on a form issued in blank for that purpose by the Commissioner of Internal Revenue, nor upon receipt of a written prescription, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. [5]

#### SEVENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the twelfth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended Feb-



bruary 24, 1919, in that he did then and there knowingly, wilfully, unlawfully and feloniously purchase from a person whose name is to the Grand Jurors unknown, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, which cocaine was not then and there in the original stamped package, nor from the original stamped package, as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### EIGHTH COUNT.

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the twelfth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December [6] 17, 1914, entitled "An act to provide for the registration of with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that being a person required to register under the provisions of said act, he did then and there unlawfully, wilfully and knowingly have in his possession, with intent to sell, a certain derivative of coca leaves, to wit: approxi-

mately two grains of cocaine, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### NINTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the twelfth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter, exchange and dispense to one Jack Robertson a certain derivative of coca leaves, to wit: approximately [7] two grains of cocaine, and the said John McKune did then and there sell, barter, exchange, and dispense the aforesaid drugs without and not in pursuance of a written order of the person to whom such article was sold, bartered, exchanged or dispensed on a form

issued in blank for that purpose by the Commissioner of Internal Revenue, nor upon receipt of a written prescription, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### TENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the thirteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully, unlawfully and feloniously purchase from a person whose name is to the Grand Jurors unknown, a certain derivative of coca leaves, to wit: approximately three grains of cocaine, which cocaine was not then and there in the original stamped package, nor from the original stamped



package, as required by law; [8] contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

### ELEVENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the thirteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that being a person required to register under the provisions of said act, he did then and there unlawfully, wilfully and knowingly have in his possession, with intent to sell, a certain derivative of coca leaves, to wit: approximately three grains of cocaine, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

## TWELFTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the thirteenth [9] day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the Jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter, exchange, and dispense to one Marjorie Robertson, a certain derivative of coca leaves, to wit: approximately three grains of cocaine, and the said John McKune did then and there sell, barter, exchange, and dispense the aforesaid drugs without and not in pursuance of a written order of the person to whom such article was sold, bartered, exchanged or dispensed on a form issued in blank for that purpose by the Commissioner of Internal Revenue, nor upon receipt of a written prescription without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the

statute in such case made and provided, and against the peace and dignity of the United States.

THIRTEENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the fourteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December [10] 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully, unlawfully and feloniously purchase from a person whose name is to the Grand Jurors unknown, a certain derivative of coca leaves, to wit: approximately one grain of cocaine, which cocaine was not then and there in the original stamped package, nor from the original stamped package, as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

FOURTEENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the County of Yakima, State of Washington, heretofore, to wit: on or about the fourteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that being a person required to register under the provisions of said act, he did then and there unlawfully, wilfully and knowingly have in his possession with intent to sell, a certain derivative of coca leaves, to wit: approximately one [11] grain of cocaine, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### FIFTEENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the county of Yakima, State of Washington, heretofore, to wit: on or about the fourteenth day of April, 1922.

at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter, exchange, and dispense to one Orville Wright, a certain derivative of coca leaves, to wit: approximately one grain of cocaine, and the said John McKune did then and there sell, barter, exchange, and dispense the aforesaid drugs without and not in pursuance of a written order of the person to whom such article was sold, bartered, exchanged or dispensed on a form issued in blank for that purpose by the Commissioner of Internal Revenue, nor upon receipt of a written prescription, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the [12] *of the* United States.

#### SIXTEENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:



That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the county of Yakima, State of Washington, heretofore, to wit: on or about the fifteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An Act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away any opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully, unlawfully and feloniously purchase from a person whose name is to the Grand Jurors unknown, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, which cocaine was not then and there in the original stamped package, nor from the original stamped package, as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

#### SEVENTEENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths as aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the county of Yakima, State of Washington, heretofore, to wit: on or about the fifteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern

District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December [13] 17, 1914, entitled "An act to provide for the registration of, with Collectors of Internal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives, preparations and for other purposes," as amended February 24, 1919, in that being a person required to register under the provisions of said Act, he did then and there unlawfully, wilfully and knowingly have in his possession, with intent to sell, a certain derivative of coca leaves, to wit: approximately two grains of cocaine, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### EIGHTEENTH COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That JOHN McKUNE, whose other or true name is to the Grand Jurors unknown, late of the county of Yakima, State of Washington, heretofore, to wit: on or about the fifteenth day of April, 1922, at Toppenish, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, did then and there violate the Act of December 17, 1914, entitled "An act to provide for the registration of, with Collector of Inter-

nal Revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, preparations, and for other purposes," as amended February 24, 1919, in that he did then and there knowingly, wilfully and unlawfully sell, barter, exchange, and dispense to one Jack T. Robertson, a certain derivative of coca leaves, to wit: [14] approximately two grains of cocaine, and the said John McKune did then and there sell, barter, exchange, and dispense the aforesaid drugs without and not in pursuance of a written order of the person to whom such article was sold, bartered, exchanged or dispensed on a form issued in blank for that purpose by the Commissioner of Internal Revenue, nor upon receipt of a written prescription, without having registered with the Collector of Internal Revenue and without having paid the special tax as required by said Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

FRANK R. JEFFREY,

United States Attorney.

Presented to the Court by the Foreman of the Grand Jury, in open court in the presence of the grand jury and filed in the United States District Court.

Sept. 6, 1922.

ALAN G. PAINE,  
Clerk. [15]



In the District Court of the United States for the Eastern District of Washington, Southern Division.

Seventh Day—May, 1923, Term—May 18, 1923.

Court met pursuant to adjournment.

Present: Hon. J. STANLEY WEBSTER, Judge;  
FRANK R. JEFFREY, U. S. District Attorney;  
H. SYLVESTER GARVIN, Ast. District Attorney;  
A. F. KEES, U. S. Marshal; DAVID HYATT, Deputy U. S. Marshal; E. DARR, Bailiff; PATRICK JORDAN, Bailiff; ALAN G. PAINE, Clerk.

PROCEEDINGS:

\* \* \* \* \*

No. 1019.

UNITED STATES OF AMERICA

vs.

JOHN McKUNE.

FRANK R. JEFFREY.

H. SYLVESTER GARVIN.

THOMPSON & DAVIS.

CHARLES BOLIN.

**Record of Trial.**

\* \* \* \* \*

The defendant John McKune, appearing in person, was arraigned at the bar of this court, and being asked whether his true name is as it is written in the indictment now on file against him, answered that it is as alleged; and having further

waived the reading of said indictment, for plea thereto says he is not guilty in manner and form as charged therein.

\* \* \* \* \*

J. STANLEY WEBSTER,  
Judge. [16]

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In the District Court of the United States for the  
Eastern District of Washington, Southern Division.

No. 1019.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOHN McKUNE,  
Defendant.

### Verdict.

We, the jury in the above-entitled cause, find the defendant Guilty as to First Count; Guilty as to Second Count; Guilty as to Third Count; Guilty as to Fourth Count; Guilty as to Fifth Count; Guilty as to Sixth Count; Guilty as to Seventh Count; Guilty as to Eighth Count; Guilty as to Ninth Count; Not Guilty as to Tenth Count; Not Guilty as to Eleventh Count; Not Guilty as to Twelfth Count; Guilty as to Thirteenth Count; Guilty as to Fourteenth Count; Guilty as to Fifteenth Count; Guilty as to Sixteenth Count; Guilty as to Seventeenth Count; Guilty as to Eighteenth Count, as charged in the indictment.

W. A. MAY,  
Foreman.

Filed May 19th, 1923. Alan G. Paine, Clerk. By  
Edward E. Cleaver, Deputy. [17]

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In the District Court of the United States for the  
Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Motion for New Trial.**

Comes now the defendant and moves the Court  
that an order be made herein granting defendant a  
new trial herein, for the following reasons, to wit:

I.

That the verdict herein was against the evidence,  
and against the weight of the evidence.

II.

Error of law occurring at the trial, and excepted  
to by the defendant.

III.

That the verdict is contrary to law and evidence.

IV.

That the verdict is against the evidence and the  
weight of the evidence upon counts 1, 2, 3, 4, 5, 6,  
7, 8, 9, and 16, 17 and 18.

V.

Newly discovered evidence material for defend-  
ant, which he could not have discovered with reason-

able diligence and produced at the trial, material for the defendant.

THOMPSON & DAVIS and  
CHAS. F. BOLIN,  
Attorneys for Defendant.

Service accepted and copy received this 21st day of May, 1923.

FRANK R. JEFFREY,  
Atty. for Ptf.

Filed in the U. S. District Court, Eastern District of Washington. May 21, 1923. Alan G. Paine, Clerk. [18]

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In the District Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
JOHN McKUNE,  
Defendant.

**Motion in Arrest of Judgment.**

Comes now the defendant and moves the Court for an arrest of judgment herein for the following reasons, to wit:

**I.**

That the indictment herein does not state facts sufficient to constitute a crime.

II.

That the indictment herein is duplicitous.

THOMPSON & DAVIS,  
Attorneys for Defendant.

Service accepted and copy received this 21st day  
of May, 1923.

FRANK R. JEFFREY,  
Atty. for Ptf.

Filed in the U. S. District Court, Eastern Dis-  
trict of Washington. May 21, 1923. Alan G.  
Paine, Clerk. [19]

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In the District Court of the United States for the  
Eastern District of Washington, Southern Divi-  
sion.

Ninth Day—May, 1923, Term—May 21st, 1923.

Court met pursuant to adjournment at 10 A. M.  
Present: Honorable J. STANLEY WEBSTER,  
Judge Presiding; FRANK R. JEFFREY,  
U. S. District Attorney; ALAN G. PAINE  
Clerk; D. L. HYATT, Crier; E. DARR and  
PAT JORDAN, Bailiffs.

PROCEEDINGS:

\* \* \* \* \*

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Record Third Day of Trial.**

And now, on this 21st day of May, A. D. 1923, the above-entitled cause came regularly for trial, defendant John McKune, appearing in person, and with his counsel Messrs. Thompson and Davis, and moves the Court for a new trial, and the plaintiff United States of America appearing by F. R. Jeffrey, United States Attorney, and H. Sylvester Garvin, Asst. United States Attorney, in opposition thereto, and after argument of counsel, and the Court being fully advised in the matter, the said motion for new trial was by the Court denied.

WHEREUPON, the defendant John McKune appearing in person, and with his counsel Messrs. Thompson & Davis, and moves the Court in arrest of judgment on the verdict of the jury, the plaintiff United States of America, appearing by F. R. Jeffrey, United States Attorney, and H. Sylvester Garvin, Asst. United States Attorney, in opposition thereto, and after argument of counsel, and the Court being advised in the matter, the said motion in arrest of judgment was by the Court denied.

J. STANLEY WEBSTER,

Judge. [20]

Thereupon counsel for the defendant excepted to the denial of said motion by the Court, which exceptions were allowed. [21]

In the District Court of the United States for the  
Eastern District of Washington, Southern Division.

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Sentence of Defendant John McKune.**

Now on this 21st day of May, A. D. 1923, the above-named defendant John McKune, appearing in his own proper person for sentence, and being informed by the Court of his conviction therein of record upon the verdict of the jury, and being asked by the Court if he has any legal cause to show, why the judgment of the Court should not now be pronounced in his case, he nothing says, save as he already has said.

WHEREFORE, it is by the Court ORDERED and ADJUDGED, that John McKune, the said defendant now before the Court be confined in the United States Penitentiary at Leavenworth, Kansas, for a period of Five (5) years, without costs of prosecution, and the said defendant is now committed to the custody of the Marshal of the United States to carry this sentence into execution.

J. STANLEY WEBSTER,

Judge. [22]



In the District Court of the United States for the  
Eastern District of Washington, Southern Division.

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Petition for Writ of Error.**

To the Hon. J. STANLEY WEBSTER, Judge of  
Said Court:

And now comes John McKune and respectfully shows that on the 19th day of May, 1923, a jury duly empanelled herein found your petitioner guilty of violating the Act of December 17, 1914, as amended February 24, 1919 (Harrison Narcotic Act), upon which verdict final Judgment was entered against said petitioner on the 21st day of May, 1923.

Your petitioner feeling aggrieved by said verdict and judgment, in which judgment and proceedings had prior thereto certain errors were committed to the prejudice of the said defendant, all of which will more fully appear from the assignments of errors and bill of particulars filed herein, petitions this Honorable Court for an order allowing him to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under



the rules and laws of the United States in such case made and provided.

WHEREFORE defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in this cause duly authenticated may be sent to the Circuit Court of Appeals, aforesaid.  
[23]

AND SAID PETITIONER FURTHER PRAYS that an order be made approving the bond of your petitioner furnished staying all further proceedings herein until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth District.

JOHN McKUNE,

Petitioner.

WILLIAM M. THOMPSON,

P. V. DAVIS,

CHARLES F. BOLIN,

Attorneys for Petitioner.

Receipt of copy of the foregoing petition admitted this 2d day of June, 1923.

FRANK R. JEFFREY,

United States District Attorney.

Filed in the U. S. District Court, Eastern District of Washington. June 30, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy.  
[24]

In the United States District Court for the Eastern  
District of Washington, Southern Division.

File No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Assignment of Errors.**

And now comes the defendant, John McKune, and in connection with his petition for a writ of error in this cause makes the following assignment of errors which he alleges occurred upon the trial hereof, and on his motion for new trial, and upon which he relies to reverse the judgment entered herein as appears of record.

I.

The Court erred in overruling the motion of defendant for a directed verdict of not guilty interposed by defendant based upon the ground that any alleged offenses that had been attempted to be proven were shown conclusively and affirmatively to have been established by evidence secured illegally in that the same was not procured by the Government of the United States, but by private parties who called themselves "private investigators" who with the purpose of inducing and entrapping the defendant to commit a crime did induce him to commit a crime, to wit, the crime of selling

prohibited narcotics to such "private investigators," and indirectly and by operation of law, the crimes of purchasing and having in his possession such prohibited narcotics without having complied with the Federal Acts in relation thereto, all as charged in the different counts in the indictment.

II.

Error of the Court in sustaining an objection of the Government to an offer by the defendant to prove by Mrs. Amy Luloff, a witness for defendant, acts of prostitution, or acts [25] from which prostitution could be reasonably inferred on the part of Mrs. Jack Robertson, one of the main witnesses for the Government, who had testified on cross-examination in answer to an interrogatory of defendant as to whether she had ever been a prostitute that she had not.

III.

Error of the Court in overruling defendant's motion for a new trial predicated upon errors of law embodied in assignments of error I and II herein.

WHEREFORE the defendant prays that the judgment of said Court be reversed and this cause be remanded to said District Court and such directions be given that the alleged errors may be corrected and law and justice done in the matter.

WILLIAM M. THOMPSON,  
P. V. DAVIS and  
CHAS H. BOLIN,

Attorneys for Defendant.

Received copy July 2d, 1923.

FRANK R. JEFFREY,  
United States District Attorney.

Filed in the U. S. District Court, Eastern District of Washington. June 30, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy. [26]

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In the District Court of the United States in and for the Eastern District of Washington, Southern Division.

File No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Order Allowing Writ of Error.**

And now on this 2d day of July, 1923, came the defendant John McKune, by his attorneys and file herein and presented to the Court his petition praying for the allowance of a writ of error intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such order and further proceedings may be had as may be proper in the premises, and that an order may be made fixing the bond to stay all further proceedings and bail of defendant until the determination of said writ of error by said Circuit Court of Appeals.

NOW, THEREFORE, on consideration of said petition and being fully advised in the premises, the Court does hereby allow said writ of errors, and

IT IS HEREBY ORDERED that the defendant John McKune may supersede and stay said judgment by filing a bond conditioned as by law provided in the sum of Seven Thousand Five Hundred Dollars for his appearance whenever required according to the conditions of his said bond. Upon filing and approval in said sum all further proceedings are hereby suspended herein until the final determination of said writ of error by said Circuit Court of Appeals, and that said defendant John McKune shall be released from custody pending the hearing and final determination of said writ of error upon filing and approval of such bond.

J. STANLEY WEBSTER,  
Judge.

Filed in the U. S. Dist. Court, Eastern District Court. July 3, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy. [27]

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In the District Court of the United States for the Eastern District of Washington, Southern Division.

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Citation (Copy).**

To the United States of America and to the Hon.  
F. A. JEFFREY, District Attorney for the  
Eastern District of Washington, Southern Division, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the United States District Court, for the Eastern District of Washington, Southern Division, wherein John McKune is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in the said writ of error, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Dated this 2d day of July, A. D. 1923, at ——.

J. STANLEY WEBSTER,

United States District Judge.

Receipt of copy of the foregoing Citation admitted this 2d day of July, 1923.

FRANK R. JEFFREY,

United States District Attorney.

Filed in the U. S. District Court, Eastern District of Washington. July 3, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy. [28]



In the District Court of the United States for  
the Eastern District of Washington, Southern  
Division.

No. 1019

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Citation (Original).**

To the United States of America and to the Hon.  
F. R. JEFFREY, District Attorney for the  
Eastern District of Washington, Southern Di-  
vision, GREETING:

You are hereby cited and admonished to be and  
appear at a session of the United States Circuit  
Court of Appeals for the Ninth Circuit, to be held  
in the City of San Francisco, State of California,  
within thirty days from the date hereof, pursuant  
to a writ of error filed in the Clerk's office of the  
United States District Court, for the Eastern Dis-  
trict of Washington, Southern Division, wherein  
John McKune is plaintiff in error, and you are the  
defendant in error, to show cause, if any there be,  
why the judgment rendered against the plaintiff in  
error, as in the said writ of error, should not be cor-  
rected and why speedy justice should not be done  
to the parties in that behalf.

Dated this 2d day of July, A. D. 1923, at —.

[Seal] J. STANLEY WEBSTER,  
United States District Judge.

Receipt of copy of the foregoing Citation admitted this 2d day of July, 1923.

FRANK R. JEFFREY,  
United States District Attorney. [29]

[Endorsed]: In the United States District Court for the Eastern District of Washington, Southern Division. United States of America, Plaintiff, vs. John McKune, Defendant. Citation. Filed in the U. S. District Court, Eastern Dist. of Washington. Jul. 3, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy.

Ent. in G. O. B., Vol. 2, page 470. [30]

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In the District Court of the United States for the Eastern District of Washington, Southern Division.

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Writ of Error (Copy).**

The President of the United States of America, to the Honorable J. STANLEY WEBSTER, Judge of the Above Court, GREETING:

Because of the records and proceedings, as also



in the rendition of the judgment, of a cause which is in the said District Court before you between the United States of America as plaintiff and John McKune as defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears, we being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the party aforesaid in this behalf, to command if judgment be given therein, that under your seal, distinctly and openly, you send the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct the errors, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States of America, this 3d day of July, 1923.

[Seal]

ALAN G. PAINE,

Clerk of the said United States District Court.

By Edward E. Cleaver,

Deputy Clerk.

Service accepted and copy received of foregoing writ of error this 2d day of July, 1923.

FRANK R. JEFFREY,

U. S. Dist. Attorney.

Filed in the U. S. District Court, Eastern District of Washington. July 3, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy. [31]

In the District Court of the United States for  
the Eastern District of Washington, Southern  
Division.

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Writ of Error (Original).**

The President of the United States of America, to  
the Honorable J. STANLEY WEBSTER,  
Judge of the Above Court, GREETING:

Because of the records and proceedings, as also  
in the rendition of the judgment, of a cause which  
is in the said District Court before you between  
the United States of America as plaintiff and John  
McKune as defendant, a manifest error hath hap-  
pened to the great damage of the said defendant,  
as by his complaint appears, we being willing that  
error, if any hath been, shall be duly corrected  
and full and speedy justice done to the party afore-  
said in this behalf, to command if judgment be  
given therein, that under your seal, distinctly and  
openly, you send the record and proceedings afore-  
said being inspected, the said Circuit Court of Ap-  
peals may cause further to be done therein to cor-  
rect the errors, what of right, and according to the

laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States of America, this 3d day of July, 1923.

[Seal]

ALAN G. PAINE,

Clerk of the said United States District Court.

By Edward E. Cleaver,

Deputy Clerk. [32]

[Endorsed]: In the United States District Court for the Eastern District of Washington, Southern Division. United States of America, Plaintiff, vs. John McKune, Defendant. Writ of Error. Filed in the U. S. District Court, Eastern Dist. of Washington. Jul. 3, 1923. Alan G. Paine, Clerk. By Edward E. Cleaver, Deputy.

Ent. in G. O. B., Vol. 2, page 470. [33]

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In the District Court of the United States for the Eastern District of Washington, Southern Division.

No. —.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Bill of Exceptions.**

BE IT REMEMBERED, that on the 18th day of May, 1923, this cause came on to be heard before

the Honorable J. Stanley Webster, Judge of said court, and a jury therein duly impaneled and sworn to try said cause; and the United States to maintain the issues on its part called certain witnesses, who, being first duly sworn, testified as follows: [34]

**Testimony of Jack T. Robertson, for the Government.**

JACK T. ROBERTSON, having been first duly sworn as a witness on behalf of the Government, testified in substance as follows:

That he was a special deputy sheriff of Walla Walla County, Washington. That he went to a place owned by defendant in Toppenish, Washington, at about four o'clock in the afternoon of April 10th, 1922, and asked defendant if I could get some cocaine, and defendant said he guessed I could. We were just inside the front door, and said, "Wait a moment, just a second or two," and stepped into a back room. He said, "How much do you want?" and I said, "A quarter." I stayed there about five minutes and he came back and gave me (identification #1, afterwards Exhibit #1) and I gave him a five dollar bill.

Met him again at his home in Toppenish, alone, between three and five o'clock P. M., April 12th, and purchased (identification #2, afterwards Exhibit #2), for which I paid five dollars.

Again on April 15th, 1922, between 10:00 and 11:00 o'clock in the morning I purchased two bindles of cocaine from him for two dollars.

(Testimony of Jack T. Robertson.)

On cross-examination he said he was a special investigator, and in answer to a question as to his definition of a special investigator he said, "I suppose it is what you would call a 'stool-pigeon.' " That the duties of such special investigator are to catch dope peddlers and bootleggers. He also testified that at the times testified to when he made the purchases from defendant he was not in the employ of the United States Government.

Also the following occurred in his cross-examination:

Q. (Mr. THOMPSON.) You, as I understand your testimony, prior to April tenth, went down there—of course you knew John was selling dope when you went down there, you knew that, did you?   A. Yes, sir.

Q. You went, and as I understand on the first occasion, on the tenth, had a conversation with him and asked him if he could [35] get you some cocaine; that is right, isn't it?

A. That is right; yes.

Q. And you asked him, induced him to go and get you some cocaine?

Mr. GARVIN, Assistant U. S. Attorney.—I object to that.

The COURT.—Let him state what happened.

Q. You asked him to go and get you some cocaine?   A. I did, sir.

Q. I don't think you finished answering the other question I asked you, and that was, after this con-

(Testimony of Jack T. Robertson.)

versation when you say that you went down there, you went back and paid him five dollars, was it?

A. Yes.

Q. To get some cocaine? A. Yes.

Q. You went back for the purpose of his doing that, didn't you?

A. I went back to get it, yes.

Q. You went back for the purpose of having him make that sale? A. Certainly, I did.

\* \* \* \* \*

Q. Where did you see him the first time?

A. At his house.

Q. What were you doing at his house?

A. I went there to see him for the purpose of getting cocaine from him on the second occasion.

Q. That is the purpose you went for, to get him to make a sale of cocaine to you? A. Yes, sir.

\* \* \* \* \*

Q. What did you say to him?

A. I asked him if I could connect again; that is about all the words I had.

Q. When you went down there you went down with the purpose and [36] intention of buying this cocaine from him? A. I did, sir.

Q. And you gave him the money? A. I did.

Q. And he gave you the cocaine? A. Yes.

This witness was further asked on cross-examination if shortly prior to the arrest of defendant and about April 10th, 1922, he did not have a conversation with Frank Swenson, formerly



(Testimony of Jack T. Robertson.)

a police sergeant of the city of Yakima, Washington, in the city of Yakima, Washington, in relation to the defendant John McKune, in which he stated to said Swenson that he was going to "get" John McCune, and if he couldn't get him one way he would get him another, to which question the said witness answered "no."

**Testimony of Mrs. J. T. Robertson, for the Government.**

Mrs. J. T. ROBERTSON was then duly sworn as a witness on behalf of the Government and in substance testified as follows:

That she visited the place of the defendant in Toppenish on April 11th, 1922. That she went down there with the intent of buying some narcotics from defendant, and asked him if he knew of a certain woman, he said, yes, he did, and I said, "She told me if I ever came to this town and needed anything I could go to you"; he said he knew her; he said, "You wait a little while, the party is not in just now"; so I sat there and waited in his bedroom; when I first went in I took a room just across the hall from his bedroom; then he had me to go in his bedroom and sit down, and we sat there and talked about this woman. I told him what I wanted. He said, "Wait just a moment," I waited there five or ten minutes. He said the party who sold it wasn't there but for me to sit down and wait awhile. I waited between 35 and 40 minutes, I expect. Pretty soon he came in and

(Testimony of Mrs. J. T. Robertson.)

handed me this bindle (Identification #4, afterwards exhibit #4) and I handed him the money, a five-dollar bill. [37]

On cross-examination by Mr. Thompson this witness testified that she was twenty-two years of age, was the wife of Jack Robertson, who had just preceded her on the stand, having married him March 2d, 1922. That she was in the city of Yakima, Washington, prior to this date and in the month of February, 1922. That she had roomed at various rooming-houses, including the Empire, the May and the Merrit, the Merrit being located at the corner of East Chestnut and South Second Streets in said city. Asked if she was engaged in the work of a special investigator at the time she was rooming at the Merrit, she said she did not think so. That at that time Jack Robertson was also rooming there.

Q. He roomed there with you?

A. I wouldn't say for certain.

Q. Would you say you were not rooming together? A. I would not answer either way.

Q. I will ask you if you were ever a prostitute? Have you ever been? A. I was not.

\* \* \* \* \*

Q. You went down there April 11th; you knew of course that John was selling dope and you went there to get him to sell you some cocaine?

A. I did.

Q. That is the purpose you went down there for?

A. I did.

Q. Are you not an addict?

A. I have never used narcotics.

**Testimony of Orville Wright, for the Government.**

ORVILLE WRIGHT was then duly sworn as a witness on behalf of the Government, and testified in substance as follows:

That he met the defendant in Toppenish, Washington, April 14th, 1922, about even with the depot. Mr. McEwen had been pointed [38] out to me before I met him there, and I walked over and spoke to him and said, "Mr. McCune, I believe?" and he said "Yes." So I went ahead and talked to him and asked him if he knew where I could get some cocaine. He didn't seem to want to answer me very much and I walked down the track. I cannot just remember the words but anyway he asked me how much I wanted and I told him five dollars' worth. So we walked down the track a little bit longer and left the railroad track and I stayed outside by his place. He went in there by a little gate and when we got to the gate he told me to wait and he would see what he could do for me. This was between eleven and twelve o'clock in the morning. He had some groceries in his arms. I waited about fifteen minutes and he came back and when he came out I said, "Did you make it, Mr. McKune?" and he said "Yes. Give me the money," and I handed him five dollars—a five dollar bill—and he handed me the dope. Here identification #5, afterwards Exhibit #5 was shown witness and he identified the same as the package he purchased from McKune.

(Testimony of Orville Wright.)

On cross-examination the following occurred:

Q. You knew he sold dope?

A. I had been told he did, yes,

Q. What is your business?

A. I guess you would call it a detective. I have been doing detective work for about three years.

Q. At the time you made this purchase from John McKune you were not in the employ of the United States Government?     A. No, sir.

Q. You went down there for the purpose and with the intention of getting him (defendant) to make you a sale?

A. I went down there to buy off of him if I could.

These three witnesses also testified that each turned over the purchases immediately to E. G. Flemming, Chief of Police of Toppenish. [39]

### **Testimony of E. G. Flemming, for the Government.**

E. G. FLEMMING, having been first duly sworn as a witness on behalf of the Government, testified in substance, that immediately after the sales testified to by the three preceding witnesses each witness turned such purchase to him, being the identifications 1, 2, 3, 4 and 5, and that he kept possession of the same until he turned them over to E. E. Cleaver, clerk of the court and also U. S. Commissioner before whom the preliminary hearing of defendant was had.

**Testimony of L. W. Cole, for the Government.**

L. W. COLE, having been first duly sworn as a witness on behalf of the Government, testified that he was Government officer and chemist and analyzed identifications 1, 2, 3, 4, and 5, and that each contained cocaine.

**Testimony of E. E. Cleaver, for the Government.**

E. E. CLEAVER, having been first duly sworn on behalf of the Government, testified in substance that he was deputy clerk of this court at Yakima, Washington, and a United States Commissioner, and at the preliminary hearing of defendant identifications 1, 2, 3, 4 and 5 had been turned over to him by E. G. Flemming, Chief of Police at Toppenish, Washington, and said identifications had been in his custody ever since up to the time of their introduction as identifications in this trial. Whereupon said identifications were introduced as exhibits herein. The Government moved to dismiss counts 10, 11 and 12 and it was so ordered.

The Government then closed its case.

Whereupon the defendant moved the Court for a directed verdict of "not guilty," which motion was as follows:

Mr. THOMPSON, of Counsel for Defendant.—I wish to make a motion at this time for a directed verdict of not guilty, for the reason that any alleged offenses that have been attempted to have been proven are shown affirmatively and conclusively by



the evidence of the Government, that the evidence was secured not by the Government of the United States, but was secured by parties who induced the defendant, and for the purpose of inducing him to commit a crime, a man whom they knew was committing a crime, and it comes [40] within the rule which has been approved by the federal courts. I have a number of cases here upon that. The distinction is laid down in a number of authorities, and I think there are two or three decisions from this district, two from the Ninth Circuit Court of Appeals, and one decision made by your honorable predecessor who very seldom missed fire on a correct ruling, in the Taylor case from Spokane.

The evidence of these witnesses was that they knew the defendant was selling narcotics. That they went down there, and I asked them particularly, and engaged him in conversation, and asked him if he couldn't get them something, and he said he would try, and upon their inducement that they would pay him, they induced him to get them a narcotic which under the federal law is made an offense to sell, and they did that solely, according to their testimony, for the purpose of getting a conviction against him, solely for the purpose of getting him to commit a crime. The rule as applicable to Government officers is more liberal, but it is held by the federal courts that where that principle underlies that even federal officers will not be permitted to do that, cause a person to commit a crime. They go to the extent that where federal officers have rea-



son to believe that a person is violating either the narcotics or postal acts, that they have a right to use certain means to entrap him and that they, to a certain extent, will be excusable for inducing one to commit a crime, when it is done solely and purely in the interests of the Government and for the purpose of enforcing a law passed by Congress. They are officers of the Government; they are paid and employed by the Government, and it is their duty to see that the revenue laws and other laws passed by Congress upon which these various acts are based are enforced, and therefore they are given a latitude, but it has been held by the Supreme Court of the United States in the leading case of *Graham* that [41] it must not be done with the purpose of having the defendant commit a crime.

Which motion for a directed verdict of not guilty was denied by the Court, the Court stated he would deny the motion at this time but the same could be presented in the trial and on motion for a new trial and the Court would hear counsel further upon this contention.

Whereupon the opening statement was made on behalf of the defendant, and the following testimony introduced on behalf of the defendant:

### **Testimony of John McKune, on His Own Behalf.**

JOHN McKUNE, having been first duly sworn as a witness in his own behalf as defendant, testified in substance as follows:

That he is the defendant in this case and sixty-

(Testimony of John McKune.)

three years of age. That he is the owner of the premises referred to by the witnesses Robertson, Mrs. Robertson and Orville Wright as his home. That said building is a one-story house consisting of nine rooms. A hallway divides the house, with five rooms on one side of said hallway and four rooms on the other side thereof. That in the month of April he was not residing there but had rented the building to Claude Clark and wife, who were then occupying and in possession of said building. That he himself during all of said time was living in another house owned by him situate at 520 East First Avenue in Toppenish, Washington. That he did not have any conversation or transaction with the witness Jack Robertson on April 10th, 1922, and did not sell any cocaine to him or receive from five dollars or any other sum, and had not sold to him exhibit #1, as testified to by said Robertson. That he did not have any conversation or transaction with said Robertson in Toppenish on April 12th, and did not sell any cocaine to him and did not receive five dollars or any other sum from him. That he did not sell exhibit No. 2 to said Robertson, as testified to by said Robertson. [42] That he did not have any conversation or transaction with the said witness Robertson in Toppenish on the 15th day of April, 1922, and sell him two bindles of cocaine for two dollars and receive from said Robertson two dollars or any other sum.

That the testimony of said Robertson in relation

(Testimony of John McKune.)

to these alleged transactions was wholly false and untrue.

That he did not have any conversation or transaction with the witness Mrs. Jack Robertson in Toppenish on April 11th, 1922, and that she did not buy from him exhibit No. 4, and he did not receive from her five dollars, or any other sum. That her testimony in relation to said alleged transaction was wholly false and untrue.

That he did not meet or see the witness Orville Wright near the depot in Toppenish, Washington, and did not have any conversation or transaction with him, and did not sell to him exhibit No. 5, and did not receive five dollars from him, or any other sum. That the testimony of said Orville Wright as to said alleged transaction was wholly false and untrue.

Defendant further testified that about April 1st, 1922, he was with Attorney Charles Bolin in Yakima, Washington, and said Bolin had some business at the police station in Yakima and defendant accompanied him there. While there at said station he had a conversation with John Herrington, then desk sergeant at said station. That the witness Jack T. Robertson happened to be in said station at the time and in the conversation with Herrington said Herrington told defendant that said Jack T. Robertson was a "special officer," or a "stool-pigeon." That the next time defendant saw said Robertson was in Toppenish the evening Chief Flemming raided the building in Toppenish belong-

(Testimony of John McKune.)

ing to defendant, the evening of April 15th, 1922. That defendant himself was at said building at said time having taken one George Denton to [43] said building for the purpose of showing him a stove which Denton was negotiating to purchase.

That the time he had the conversation with Herrington was in the afternoon and it was daylight.

On cross-examination (of Defendant John McKune) the following occurred:

Q. (By Mr. GARVIN.) Have you ever been convicted of a felony?

A. What does a felony consist of?

Q. A felony consists of a crime of which a man was convicted and has been sentenced to be confined in the penitentiary. A. I don't think so.

By Mr. THOMPSON.—We will admit whatever the record shows.

The COURT.—Has he ever been convicted of a crime?

Q. (Mr. GARVIN.) Were you ever convicted of introducing liquor on to an Indian reservation?

A. Yes, sir.

### **Testimony of John V. Herrington, for Defendant.**

JOHN V. HERRINGTON was then duly sworn as a witness on behalf of defendant, and in substance testified as follows:

That he has been a police officer of the city of Yakima for about eleven years to July 1st, 1922. That in the month of April, and about April 1st, 1922, Charles Bolin and defendant were talking to-

(Testimony of John V. Herrington.)

gether. At the time the witness Jack T. Robertson happened to be or come into the station. In the course of the conversation McKune asked him who said Robertson was, and said Herrington told defendant that said Robertson was a special officer, or a stool-pigeon, that at the time witness recalled that Frank Swensen was present but could not testify whether Swenson heard said conversation.

**Testimony of Amy Luloff, for Defendant.**

AMY LULOFF was then duly sworn as a witness on behalf of the defendant, and in substance testified as follows:

That she was conducting and the proprietress of a rooming-house in the city of Yakima, Washington, known as the Merrit Hotel, [44] situate on the corner of East Chestnut Street and South Second, in the early part of the year 1922, and particularly in January, February and April of said year. In the course of her examination the following occurred:

Q. (By Mr. THOMPSON.) I will ask you if in the early part of 1922 there roomed at your place a woman known as Mrs. Roberston? A. Yes, sir. [45]

Q. Did a man by the name of Jack Robertson room there? A. Yes, sir.

Q. Have you seen those persons in the courtroom or around the courthouse since you have been here? A. Yes, I have.



(Testimony of Amy Luloff.)

Q. Are those the same people that had rooms at your rooming-house?     A. Yes, sir.

Q. I will ask you to state whether or not anything was called to your attention as the proprietress of that hotel in relation to the woman who then called herself Mrs. Robertson.

Mr. GARVIN.—I am going to object to that.

Q. As to what she was doing?

The COURT.—Answer that yes or no.

A. Yes, sir.

Q. You may state what it was.

\*       \*       \*       \*       \*       \*       \*       \*

Objection sustained.

At a later time in the trial and before the close of the defense the defendant made the following offer:

By Mr. THOMPSON.—I offer to prove by the witness Mrs. Luloff, that between the month of February and the first of April, 1922, for a period of a week or ten days Mrs. Robertson roomed at her rooming-house and that during a part of the time that said witness Mrs. Robertson was there, a large number of men, different men, came and went from the room of Mrs. Robertson at different hours of the day and unseemly hours of the night, and that finally on account of the situation and the conduct of Mrs. Robertson, Mrs. Luloff was directed and ordered by her to leave the rooming-house of Mrs. Luloff.

The offer was rejected by the Court and an exception allowed to defendant.



**Testimony of L. W. Cole, for the Government—  
Redirect Examination.**

Mr. COLE, by consent of the Court and the defendant, was called as a witness on behalf of the Government and testified in redirect [46] examination that “merriwanna” is a Mexican name for Indian hemp, and is used by some whites and Indians, which they smoke. It acts as or has an exhilarating effect and affects the nerves entirely and is not a narcotic. Asked if it was used by people who use narcotics he replied that it could not be used as a substitute for a narcotic. It simply exhilarates the nerves.

**Testimony of Frank Swenson, for Defendant.**

FRANK SWENSON, being first duly sworn as a witness on behalf of defendant, testified in substance as follows:

That shortly prior to the arrest of the defendant and about April 10th, 1922, he had a conversation with the witness Jack T. Robertson in the city of Yakima, Washington, in relation to the defendant John McKune, in which Robertson made the statement that he was going to “get” McKune, and if he couldn’t get in one way he would get him in another. He further testified that he was at the station at the time Charles Bolin and John McKune came there, about April 10th, 1922, or shortly prior thereto, and saw John Herrington and defendant talking together but did not hear the conversation. That he had formerly been a deputy sheriff of Yakima

(Testimony of Frank Swenson.)

County and for a number of years had been a police officer of Yakima, Washington, and part of the time desk sergeant of said city police.

He further testified that he was acquainted with the general reputation of the witness Jack Robertson for truth and veracity in the community in which he lived and in Yakima during the time he was there, and that said reputation was bad. That his present business was that of operating a detective agency. That he had been employed by Mr. Thompson to hunt up evidence on behalf of the defendant.

### **Testimony of Frank Colton, for Defendant.**

FRANK COLTON, having been duly sworn, said on oath, testified on behalf of defendant in substance as follows:

That he was a laborer and also at times followed professional wrestling. That he knew the witness in March and April, 1922. During part of said time he was rooming at the Pacific Hotel, in Yakima, Washington. That [47] said Robertson and the Witness Orville Wright were rooming at said Pacific Hotel together. There was a woman there too who was the wife of said Robertson, said she was his wife. That he became closely acquainted with said Robertson and was at different parties with him several times. During said time upon an occasion in said hotel he saw said Robertson use either cocaine or morphine. That he had seen him use both cocaine and morphine and also his wife (the

(Testimony of Frank Colton.)

witness Mrs. J. T. Robertson). At one time they three or four capsules of cocaine when I was in the hotel with them. They had three or four capsules of cocaine and they took and opened one capsule and dumped it on a paper and took little pieces of card and picked it up and sniffed it in their noses.

On another occasion in a hotel on Front Street I saw him and a Mexican take morphine and put in a spoon and heat it up and then put in their needle and put it in their arm.

**Testimony of Hattie Bullard, for Defendant.**

HATTIE BULLARD, having been first duly sworn as witness on behalf of defendant, testified in substance as follows:

That she knew the witness Jack Robertson and saw him the early part of April, 1922. She did not see him use cocaine but she saw him use "merri-wana," and gave her some.

**Testimony of George Denton, for Defendant.**

GEORGE DENTON, having been first duly sworn as witness on behalf of defendant, testified in substance as follows:

That he had been at the building in Toppenish owned by defendant at the time of the raid on April 15th, 1922, and had gone over there for the purpose of looking at a stove that defendant was negotiating to sell him.

**Testimony of Dr. J. Nyewenning, for Defendant.**

Dr. J. NYEWENNING, having been sworn as a witness in behalf of defendant, in substance testified:

That he was a physician and surgeon. His qualifications having been admitted, the doctor testified that addicts are untruthful and unreliable. In answer to a question as to what he would say as to a witness who is a user of narcotics could or could not his word be depended on with much reliability, he answered "positively not." [48]

In answer to the question "Can you state whether or not in the chemical world 'meriwanna' is a narcotic, or a derivative of a narcotic?" he answered, "Yes, sir, it is a narcotic."

**Testimony of Frank Colton, for the Government—  
(Recalled—Cross-examination).**

The Government then recalled FRANK COLTON for further cross-examination as follows:

Q. (By Mr. GARVIN.) Directing your attention to the month of February, 1923, when you were arrested in the city of Toppenish and you were searched by Mr. Ed. Flemming, Chief of Police of Toppenish, that an affidavit was found in your pocket pertaining to this case, that you told Mr. Flemming that you had to get an affidavit signed by a woman at Cle-elum in the McKune case—that at that time you told Mr. Flemming that Mr. Charles Bolin, one of the attorneys for Mr. Mc-

(Testimony of Frank Colton.)

Kune, had requested you to have that affidavit signed?

Objection. Overruled.

A. No, sir.

Q. Wasn't that affidavit found in your pocket and wasn't it turned over to you by Mr. Bolin?

A. No, sir.

Q. And that affidavit was signed at that time. Did you have an affidavit in this case in your pocket and did you not have a conversation with Mr. Flemming in reference to a woman in some other town who signed the affidavit? A. I did not.

The defendant here closed his case.

IN REBUTTAL, the witnesses Jack T. Robertson and Mrs. J. T. Robertson having been recalled by the Government denied they had used narcotics as testified to by the witness Colton.

Several police officers of the city of Yakima, Washington, were called and duly sworn as witnesses on behalf of the Government, and testified that they were acquainted with the general reputation of the witness Jack T. Robertson in the community for truth [49] and veracity, and that it was good.

**Testimony of E. G. Flemming, for the Government  
(Recalled in Rebuttal).**

E. G. FLEMMING was recalled as a witness on behalf of the Government and the following occurred:

Q. (By Mr. GARVIN.) Are you acquainted with a man named Frank Colton? A. Yes, sir.



(Testimony of E. G. Flemming.)

Q. Did you have occasion to search his person at any time in Toppenish about February 23d, 1923?

A. Yes, sir.

Q. Did you find an affidavit on his person signed by a woman in Cle-elum? A. Yes, sir.

Q. Did you have a conversation with him at the time about the McKune case? A. Yes, sir.

Q. What was the conversation?

A. I asked him how he happened to have that affidavit in his pocket and he said Mr. Bolin the attorney had sent the affidavit with him to have a party in Cle-elum sign it.

Q. Do you recall the name of the party?

A. No, sir.

Q. Was it signed? A. It was. [49½]

That upon the conclusion of the testimony and when both the plaintiff and defendant had rested the Court instructed the jury as follows:

### **Instructions of Court to Jury.**

The COURT (Orally).—In connection with all the counts, I instruct you that if you find from the evidence beyond a reasonable doubt that the substance introduced in evidence is cocaine and that cocaine is a salt or derivative of coca leaves, it is immaterial as to the amount in each package so far as the element of the offense itself is concerned; you are at liberty to take into consideration the evidence in the case concerning the amount contained in each package as shedding light upon the question of whether or not the witnesses made the



purchases at the times and places and under the circumstances testified to by them.

The defendant in this case has interposed a plea of not guilty and the effect of that plea is to place in issue all the material allegations in each and every of the counts contained in the indictment and to cast upon the Government the burden of providing each and every of the material allegations beyond a reasonable doubt. In this connection I instruct you that every person accused of crime is presumed to be innocent; that is one of the defendant's important rights. It is a substantial part of the law of the land. It is not a mere fiction which you may disregard at pleasure, but it is one of the safeguards and protections which the law in its wisdom places around every person accused of crime; it attaches to the accused and continues with him throughout all stages of the trial and throughout all the stages of your deliberations as jurors until the defendant's guilt has been established by competent evidence beyond a reasonable doubt and notwithstanding such a presumption of innocence.

[50]

By reasonable doubt as used in these instructions is meant in law just what those words in their ordinary and everyday use imply. They have no technical, legal meaning different from their ordinary commonsense meaning. A reasonable doubt is a doubt that is based upon a reason. It has been defined to be such a doubt as, if entertained by a man of ordinary prudence, intelligence and decision, in dealing with the graver or more important affairs

of life, such for example as is the outcome in this case to this defendant, would have influence with him or cause him to pause and hesitate before acting thereon. It must be a real and substantial doubt and must arise out of a fair, practical, commonsense consideration of the evidence in the case. You must not resort to imaginations and invention merely as an excuse for finding the defendant not guilty; neither must you find the defendant guilty unless you are able to say in your consciences that you have an abiding conviction to a moral certainty of the defendant's guilt.

If after analyzing all the evidence in the case, you are able to say that you have an abiding conviction of the defendant's guilt to a moral certainty, then you are convinced beyond a reasonable doubt; if you are unable so to say, then you do have a reasonable doubt and such doubt must be resolved in favor of the accused.

In this connection I charge you that public policy forbades that officials charged with the enforcement of the law should seek to have the laws violated, and that those whose duty it is to detect criminals should make criminals; so that when an officer induces a person who has no intention of violating the law to violate the law, the courts will not lend their assistance to the prosecution of one so allured and induced to commit a crime.

If in this case the witnesses had reasonable grounds to [51] suspect that the defendant was dealing in narcotics and their action was taken in an effort to detect crime and not to induce the com-

mission of crime, then such action was lawful, and if the defendant possessed or sold narcotics as charged in the indictment he is guilty.

If, on the other hand, you find the action of the witnesses was taken in bad faith and for the purpose of inducing and inciting the defendant to commit the offense charged, and that they in fact induced the original intent on the part of the defendant to possess and deal in narcotics, you will find the defendant not guilty.

In other words, if an intent and purpose to possess, purchase or sell narcotics had been formed in the mind of the defendant before meeting the witnesses and having the transactions with him, if such transactions occurred, and defendant was already engaged in the business, then the action of the witnesses in gleaning the evidence was proper and such means were proper in gleaning the evidence.

On the other hand, if the defendant was not dealing in narcotics and had no intention of so doing, and the action of these witnesses had the effect of inducing him to engage in the business and to violate the law, and to inspire in his mind a purpose to become a criminal, then that would not be sufficient and the defendant should be found not guilty.

In this connection I deem it proper to say to you that where it appears that a witness is employed and paid for the purpose of gleaning and gathering evidence to be used in proving crime it is the duty of the jury to view the testimony of such witness with caution and to take into consideration those ele-

ments in appraising its moral worth. It does not follow as a matter of law that a person so employed is incapable of telling the truth, [52] but it is for you to determine, in view of all the facts and circumstances disclosed from the witness-stand, taking into account the character of the witness and his employment, as I have indicated, and in the light of all the circumstances appraising it as of that moral value and convincing force as in your reasonable judgment as men experienced in the ordinary affairs of life believe it is justly and fairly entitled to receive.

The function of the jury in a trial of a case of this sort, and its sole function, is to determine what is the evidence in the case and what weight and credit shall be given the several witnesses who have appeared and testified before you. Into that field nobody has a right to enter; it is your sole province. It is your duty in analyzing the evidence in this case to take into consideration the conduct and demeanor of the several witnesses while testifying before you, the intelligence or lack of intelligence of a witness, as it is made to appear; the reasonableness or unreasonableness of the testimony given by the witness, the knowledge or lack of knowledge of the witness upon the subject to which he testifies, his opportunity or lack of opportunity for knowing or being informed concerning the matter to which he testifies, the readiness or reluctance of a witness in testifying, his apparent candor or frankness or lack of those qualities, if any appears, the interest or lack of interest any witness may have in the out-

come of your verdict, and in the light of all the facts and circumstances surrounding the witness as disclosed from the witness-stand, give the testimony of each witness that fair and candid consideration and weight which in your reasonable judgment as men versed in the ordinary affairs of life it appeals to your consciences as being justly and rightly entitled to receive. .

In considering the evidence in the case, gentlemen of the jury, you should consider it carefully in connection [53] with the material allegations of each count in the indictment as I have endeavored to explain to you what the material allegation of these several counts are, and as to any and all counts upon which you entertain a reasonable doubt, you should find the defendant not guilty; and as to any and all counts upon which you are convinced of the guilt of the defendant by the evidence in the case beyond all reasonable doubt, measured by the rules I have given you and taking into consideration the presumption of innocence as I have defined it to you, upon any such counts you should find the defendant guilty.

For your convenience there will be submitted to you forms of verdict upon which certain appropriate blanks will be left. Upon your agreeing upon a verdict, you will fill in the blanks corresponding with your conclusions and appropriate to express your verdict; you will select one of your number, as foreman, and he will sign the verdict after you have agreed upon it, and return it into court.



I instruct you, gentlemen of the jury, that if you find in this case any witness has deliberately and wilfully testified falsely concerning any material fact in this case, then and in that event you are at liberty to disregard the entire testimony of such witness, except in so far as you may find it to be corroborated by other credible evidence in the case and by known and established fact.

In considering the evidence in this case, gentlemen, I charge you that it is not sufficient for you to find merely that the evidence adduced is consistent with the theory of the defendant's guilt; before you can find the defendant [54] guilty, you must believe beyond a reasonable doubt that it is insistent with his innocence and inconsistent with every other reasonable hypothesis except that of guilt.

It is competent in the trial of a case to show that any witness is addicted to the use of a narcotic drug, and also to show what is the effect and consequences of the use of such drug and such addiction upon the mental and moral faculties of the one so addicted. If in this case you find that any witness was or is addicted to the use of a narcotic and in virtue of such addiction is so unstable mentally or morally as to be unworthy of belief at your hands, you are at liberty to disregard the testimony of that witness; on the other hand, if you find that *nor* witness testifying in the case was or is addicted to the use of a narcotic drug, then the evidence relating to that subject will be discarded from your consideration; upon the other hand, if you find *find*



some witness was so addicted, you do not necessarily have to disregard his testimony, but in determining the weight and credit you will attach to his testimony, you are at liberty to take into consideration, together with such addiction, if any, upon the ethical and moral qualities of the witness and its effect upon his moral principles. [55]

And thereupon the jury retired to consider their verdict and thereupon on the 19th day of May, 1923, the jury returned with their verdict finding the defendant guilty as charged in all the counts of the indictment, except the tenth, eleventh and twelfth counts, which last three counts had been previously dismissed upon motion of the United States District Attorney.

And thereupon the defendant, by his counsel, moved the Court for a new trial on the following grounds:

1. That the verdict was against the evidence, and against the weight of evidence.

2. Error of law occurring at the trial and excepted to by the defendant.

3. The verdict is contrary to law and evidence.

4. That the verdict is against the evidence and the weight of the evidence upon counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17 and 18.

5. Newly discovered evidence material for defendant which he could not have discovered with reasonable diligence and produced at the trial, material for the defendant.

Which said motion was denied by the Court and exception allowed.

In ruling upon defendant's motion for a new trial the Court assumed and considered that the defendant had renewed his motion for a directed verdict of not guilty, which he had interposed at the close of the Government's testimony, on the same grounds specified and urged at the close of the Government's case and after the plaintiff had rested.

And thereupon the defendant moved the Court to arrest judgment upon said verdict of the jury on the following grounds:

1. That the indictment does not state facts sufficient to constitute a crime.

2. That the indictment is duplicious.

After argument of counsel the Court denied said motion in [56] arrest of judgment, to which ruling of the Court the defendant excepted, which exception was allowed by the Court.

The Court rendered no opinion in making its rulings and decisions denying defendant's motion for a new trial and in arrest of judgment.

And thereupon on the 21st day of May, 1923, the Court entered judgment against said defendant adjudging him guilty as charged in the indictment (except as to Counts 10, 11 and 12) and thereupon the Court sentenced the defendant to be imprisoned in the United States Penitentiary at Fort Leavenworth, Kansas, for the period of five years.

AND NOW, because the foregoing matters and things are not of record in this case, I, J. Stanley Webster, the Judge who tried the above-entitled

cause in the above-entitled court, do hereby certify that the foregoing BILL OF EXCEPTIONS correctly and fully states the proceedings and all thereof and contains and fully and accurately sets forth all of the testimony and evidence adduced upon the trial of said cause and contains all of the instructions of the Court to the jury, and truly states the rulings of the Court upon the questions of law presented and the objections and exceptions taken by the defendant appearing therein were duly taken and allowed; that said Bill of Exceptions were prepared and submitted within the time allowed by law and the rules of the Court and is now signed and settled as and for the Bill of Exceptions in said cause, and the same is hereby now ordered to be made a part of the record in said cause.

It is further ordered that all of the original exhibits introduced in evidence in the trial of this cause and now in the custody of the Clerk of this court be made a part of this Bill of Exceptions and filed therewith, and need not be printed [57] but shall be attached to the record and transmitted by said Clerk to said United States Circuit Court of Appeals for the Ninth Circuit.

IN WITNESS WHEREOF I have hereunto set my hand this 1st day of October, 1923.

J. STANLEY WEBSTER,  
United States District Judge.

Due service of the attached Bill of Exceptions and receipt of a true copy thereof admitted this 1st day of October, 1923.

FRANK R. JEFFREY,  
United States District Attorney.

Filed in the U. S. Dist. Court, Eastern Dist. of Washington. October 1, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy.

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In the District Court of the United States, for  
the Eastern District of Washington, Southern  
Division.

File No. 1019.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOHN McKUNE,  
Defendant.

**Praeipce for Transcript of Record.**

To the Clerk of the Above-entitled Court:

You will please prepare transcript for the record in the above-entitled cause to be heard on a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit containing true copies of the following documents and papers and records in said above cause, to wit:

1. Indictment. 2. Arraignment and plea. 3. Verdict. 4. Motion for new trial. 5. Motion in

arrest of judgment. 6. Journal entry showing overruling thereof and exception. 7. Judgment and sentence. 8. Petition for writ of error. 9. Assignment of errors. 10. Order allowing writ. 11. Citation. 12. Writ of error. 13. All proofs of service. 14. Endorsements and file-marks appearing on any of said papers. 15. This praecipe. 16. Bill of exceptions.

WILLIAM M. THOMPSON,  
P. V. DAVIS,  
CHAS. F. BOLIN,

Attorneys for Defendant.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 23, of this court, as amended to October 25, 1922.

WILLIAM M. THOMPSON,  
P. V. DAVIS,  
CHAS. F. BOLIN, [60]

Attorneys for Defendant.

[Endorsed]: Filed in the United States District Court, Eastern District of Washington, Southern Division. November 13th, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy. [61]

In the District Court of the United States, for  
the Eastern District of Washington, Southern  
Division.

No. 1019.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN McKUNE,

Defendant.

**Certificate of Clerk U. S. District Court to Tran-  
script of Record.**

United States of America,  
Eastern District of Washington,—ss.

I, Alan G. Paine, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages to be a full, true and correct copy of so much of the records, papers and other proceedings in the foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitutes the record of appeal on writ of error from said United States District Court for the Eastern District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the original writ of error and citation are transmitted herewith as a part of said appeal.



I further certify that the cost of preparing the foregoing transcript of record amounts to the sum of Twenty-two and 50/100 Dollars, which amount has been paid by attorneys for the plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court at Yakima, Washington, this 13th day of November, A. D. 1923.

[Seal] ALAN G. PAINE,  
Clerk U. S. District Court, Eastern District of  
Washington. [62]

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[Endorsed]: No. 4144. United States Circuit Court of Appeals for the Ninth Circuit. John McKune, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Southern Division.

Filed November 17, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

